IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.993 OF 2000

The Commissioner of Income Tax
City I, Mumbai Aayakar Bhavan
Churchgate, Mumbai-20 ...Appellant.

V/s.

M/s. Schell International
2-B, Mistry Court
208, Dinshaw Wachha Road,
Churchgate, Mumbai-20 ...Respondents.

Dr.P.Daniel for the Appellant.
Mr.Atul Jasani for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 28th June, 2005.

ORAL JUDGMENT: (Per J.H.Bhatia,J.)

1. The Appeal filed by the Revenue under section 260A of the Income Tax Act,1961, is directed against the order passed by the Income Tax Appellate Tribunal Mumbai, Bench Mumbai, dated 10.1.2000 in Income Tax Appeal No.790/Bombay/95.

2. To state in brief, the Respondent had taken up the production of the film called "Siyasat" during financial year 1988-89 to 1992-93. As per the provisions of Section 285B, he was required to file the statement in

form No.52A for each of the assessment year, within 30 days from expiry of the financial year. Failure to file such statement leads to imposition of penalty under section 272A(2) of the Income Tax Act, 1961. As the Respondent failed to submit the statements, the Show-cause Notice dated 28th January, 1993 was issued and was served on him on 3rd February, 1993. He submitted the statements on 2nd March, 1993. As no reasons were specified for not filing the statement, another notice dated 9th March, 1993 was issued. In response to the said notice, he explained that it was his first and last venture which had flopped and due to the ignorance of legal formalities, he could not submit the statements. After hearing, the Assessment Officer imposed consolidated penalty of Rs.1,40,000/-. That order was maintained in Appeal by the Commissioner of Income Tax (Appeal). In Appeal by the Respondent, the Tribunal set aside the order of the Assessment Officer holding that due to the ignorance of the provisions of law, he had failed to submit the statements and as soon as, he came to know about the requirement, he had submitted the

same. Therefore, non-submission of the statements was not intentional, deliberate or due to negligence.

3. The Revenue has challenged the said order of the Tribunal and raised the following substantial question of law.

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the penalty of Rs.1,40,000/- levied u/s.272A(2) r.w.s.285-B of the I.T.Act ?"

4. Heard the learned counsels for both the parties. The explanation given by the Respondent for not filing the statement shows that it was his first venture in film production and it had also flopped. And therefore, he did not continue in the business. He was not aware that under the provisions of Income Tax Act, he was required to submit the statements within 30 days from the expiry of the relevant assessment year.

As soon as, he got show-cause notice, he submitted the statements. Infact, no tax was due from him. The explanation appears to be reasonable. The learned counsel for the Appellant vehemently contended that ignorance of law is no excuse. However, in **Motilal Padampat Sugar Mills Co.Ltd. v. State of Uttar Pradesh 118 Income Tax Reports 326,** the Supreme Court observed as under:

> "Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that every one is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maula J. pointed out in **Martindale v. Falkner (1846) 2 CB 706:** "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so." Scrutton L.J. also once said: "It is impossible to know all the statutory law, and not very possible to know all the common law". But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in **Evans v. Bartlam (1937) AC 473:** "......the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application".

5. In view of the law laid down by the Supreme Court, it is clear that there is rule

that ignorance of law is no excuse but there is no presumption that every one knows the law.

6. In Hindustan Steel Ltd. v. State of Orissa 83 I.T.R. 26, which was a matter under Orissa Sales Tax Act, Their Lordships of the Supreme Court observed as follows:

> "Under the Act penalty may be imposed for failure to register as a dealer: section 9(1), read with section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a

> bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

7. In view of the above quoted authorities from the Supreme Court and the explanation given by the Respondent, we are satisfied that in view of the facts and circumstances, the Tribunal was justified in quashing the order of penalty passed by the Assessment Officer.

8. In the result, we answer the question in affirmative, that is in favour of the Respondents. The Appeal stands dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)